

REMARKS

Favorable reconsideration of this application, as presently amended and in light of the following discussion, is respectfully requested.

After entry of the foregoing preliminary amendment, Claims 16-30 remain pending in the present application. Claims 16, 18, 27, and 28 are amended to clarify features previously presented, Claim 18 having been rewritten into independent form. Support for the amendments to Claim 16 and 18 may be found at least on page 10, lines 9-13 and page 11, lines 9-11 of Applicant's specification. No new matter is added.

In the Official Action dated February 26, 2008, the drawings were objected to; Claim 28 was rejected under 35 U.S.C. §112, first paragraph, as allegedly failing to comply with the enablement requirement; Claims 16 and 18-30 were rejected under 35 U.S.C. § 102(b) as anticipated by Qui et al. (U.S. Pat. Pub. No. 2003/0029705, hereinafter "Qui"); and Claim 17 was rejected under 35 U.S.C. § 103(a) as unpatentable over Qui.

OBJECTION TO THE DRAWINGS

With regard to the objection to the drawings outlined at page 2 of the Official Action, Applicant submits that the "release spring-forming means" recited in Claim 28 may find support at least in Applicant's Fig. 4 with reference to label 111, and in the corresponding description on page 12 line 21 to page 13, line 2 of Applicant's specification.

Accordingly, Applicant respectfully requests that the objection to the drawings be withdrawn.

REJECTION UNDER 112, FIRST PARAGRAPH

The Official Action has rejected Claim 28 under 35 U.S.C. §112, first paragraph. Applicant respectfully traverses the rejection.

As noted above, the “release spring-forming means” recited in Claim 28 may find support at least in Applicant’s Fig. 4 with reference to label 111 and in the corresponding description on page 12 line 21 to page 13, line 2 of Applicant’s specification.

Accordingly, Applicant respectfully requests that the rejection of Claim 28 under 35 U.S.C. §112, first paragraph be withdrawn.

REJECTION UNDER 35 U.S.C. §102

The Official Action has rejected Claims 6-20 under 35 U.S.C. §102 as unpatentable over Qiu. The Official Action contends that Qiu describes all of the Applicant’s claimed features. Applicant respectfully traverses the rejection.

Applicant’s amended Claim 16 recites, *inter alia*, a bistable MEMS microswitch, including

means for actuating the beam to place the beam either in a first deformed position corresponding to a first stable state, or in a second deformed position corresponding to a second stable state, the second deformed position opposing the first deformed position, wherein the microswitch is activated to urge the beam from an initial, non-deformed position to connect the electrical contact-forming mechanism to ends of the at least two conductive tracks.

In an exemplary embodiment, Applicant’s Figure 1 shows an example of the beam in an initial position before being subjected to a compressive stress. Thus, adjusting the flexibility of the beam enables the stresses in the beam to be controlled both initially, (intrinsic stresses) and during a transition state (passing through a buckling state). This control limits the risks of breakage of the beam, and also enables the power consumption of the microswitch to be limited (lowering the switching temperature of the microswitch).

Qiu does not disclose or suggest “the microswitch is activated to urge the beam from an initial, non-deformed position to connect the electrical contact-forming mechanism to ends of the at least two conductive tracks,” as recited in amended Claims 16. Hence, independent

Claim 16 (and the claims dependent therefrom) is believed to define over the applied reference.

Amended Claim 18 has been rewritten into independent form and recites, *inter alia*, a bistable MEMS microswitch, including

means for actuating the beam to place the beam either in a first deformed position corresponding to a first stable state, or in a second deformed position corresponding to a second stable state, the second deformed position opposing the first deformed position, wherein the microswitch is a single microswitch and is activated to urge the beam from an initial, non-deformed position to the first deformed position to connect the electrical contact-forming mechanism to ends of the at least two conductive tracks, and the second deformed position corresponds to an absence of a connection.

Qiu does not disclose or suggest “the microswitch is a single microswitch and is activated to urge the beam from an initial, non-deformed position to the first deformed position to connect the electrical contact-forming mechanism to ends of the at least two conductive tracks, and the second deformed position corresponds to an absence of a connection,” as recited in amended Claims 18. Hence, independent Claim 18 is believed to define over the applied reference.

Accordingly, Applicant respectfully requests that the rejection of Claims 16 and 18-30 under 35 U.S.C. §102 be withdrawn.

The Official Action asserts on page 4 that the two conductive tracks in Qiu would “inherently [have] at least *some* flexibility,” which appears to be directed to the rejection of Claim 28. [Emphasis added]. Applicant respectfully submits that “some flexibility,” is not recited in the claims, nor is this assertion substantial evidence as required by In Re Zurko.¹

¹ See *In re Zurko*, 258 F.3d 1379, 1385, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001)

Further, M.P.E.P. § 2112 indicates that the fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of the result or characteristic. In Re Rijckaert, 9 F.3d 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir. 1993). In relying upon the theory of inherency, the Examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic **necessarily** flows from the teachings of the applied prior art.” Ex parte Levy, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990). To establish inherency, the extrinsic evidence ‘must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. Inherency, however, may not be established by **probabilities or possibilities**. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.”” In Re Robertson, 169 F.3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999) (citations omitted) (MPEP § 2112).

However, the Official Action provides no such extrinsic evidence to support a finding of inherency. Thus, Applicant submits that the Official Action has failed to produce a *prima facie* case of obviousness. Accordingly, Applicant respectfully submits Qiu does not disclose or suggest “the ends of the conductive tracks have a flexibility enabling them to match the form of the electrical contact-forming mechanism during a connection,” as recited in Claim 28.

Should the Examiner insist on maintaining the rejection, Applicant respectfully requests that the Examiner provide evidence to support the above-noted undocumented assertion.

REJECTION UNDER 35 U.S.C. §103

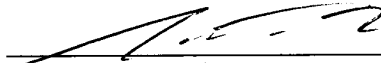
With regard to the rejection of Claim 17 as unpatentable over Qiu, as noted above, Qiu does not provide all of the features of the amended claims. Accordingly, Applicant requests that the rejection of Claim 17 under 35 U.S.C. §103 be withdrawn.

CONCLUSION

Consequently, in view of the foregoing amendment and remarks, it is respectfully submitted that the present application, is patentably distinguished over the prior art, in condition for allowance, and such action is respectfully requested at an early date.

Respectfully submitted,

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